IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

WEDNESDAY, THE 18TH OCTOBER 2006 / 26TH ASWINA 1928

Crl.Rev.Pet.No. 3323 of 2004(A)

(AGAINST CRL. APPEAL NO. 87 OF 1993, SESSIONS COURT, PATHANAMTHITTA AGAINST SC.75/1991 of ASSISTANT SESSIONS COURT, PATHANAMTHITTA)

.....

REVN. PETITIONER:

CHERIAN @ RAJAN,
CONVICT NO.7483, CENTRAL PRISON,
THIRUVANANTHAPURAM (CHERIAN @ RAJAN
S/O. DANIEL, MULLASSERIL VEEDU,
PATHEKAR MURI, THENMALA VILLAGE).

BY ADV. SRI.GRASHIOUS KURIAKOSE

RESPONDENTS:

STATE OF KERALA, REPRESENTED BY A
PUBLIC PROSECUTOR, HIGH COURT OF KERALA

BY PUBLIC PROSECUTOR SHRI P. SURESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 18/10/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

==========

CRL. R.P. NO.3323 OF 2004

==========

Dated this the 18th day of October, 2006

O R D E R

The accused in S.C. No. 75 of 1991 on the file of the Assistant Sessions Judge, Pathanamthitta is the Revision Petitioner. Petitioner was charge sheeted by the Deputy Superintendent of Police, Adoor alleging that the petitioner committed the offences punishable under Sections 498A and 306 IPC. The learned Assistant Sessions Judge found the petitioner guilty of the offences charged and convicted him. He was sentenced to undergo Rigorous Imprisonment for two years under Section 498A of the IPC. He was also sentenced to undergo Rigorous Imprisonment for 5 years and to pay a fine of Rs.30,000/- and in default of payment of fine, to undergo Rigorous Imprisonment for 2 years under Section 306 IPC. Petitioner filed Crl. Appeal No.87 of 1993 before the learned Sessions Judge, Pathanamthitta. The learned Sessions Judge concurred with the findings of the Assistant Sessions Judge and dismissed the appeal. Petitioner is undergoing the sentence. This Criminal Revision Petition is filed through the Superintendent

of Central Prison, Thiruvananthapuram.

2. Petitioner married Sali, the deceased, on 23.6.1986 in accordance with customary rites. She was residing along with the petitioner in his parental house. A child was born in that wedlock on 30.7.1987. According to the prosecution from the early dates of the marriage itself, petitioner used to treat the deceased with cruelty. He used to beat her frequently. At the time of marriage, the parents of deceased Sali gave her Rs.10,000/- and 5 sovereigns of gold. The accused-petitioner misappropriated the same. On account of the constant torture, parents of the deceased assigned 10 cents of land in favour of the deceased and the petitioner. The petitioner compelled the deceased to sell the said property. She refused to accede to the demand of the petitioner. So he used to manhandle her. On a number of occasions Sali left the matrimonial home but she was taken back by the petitioner promising that there will be no moe harassment. Few days prior to the incident, the petitioner manhandled the deceased. She left the matrimonial home again with her child and went to the

house of her parents. On 9.4.1988, petitioner went to the house of the deceased and told her that he had taken a house on rent and that he will not manhandle her further. The deceased along with her child accompanied the petitioner to that house. That house actually belonged to one of the aunts of the petitioner. After reaching that house also, the petitioner treated the deceased with cruelty. At about 7.30 p.m. on 13.4.1988 deceased Sali administered poison to their only child and consumed poison by herself. P.W.1 and others took Sali and the child to the hospital. The doctor who examined Sali proclaimed her dead. The child survived. On 14.4.1988, P.W.1 went to the Adoor Police Station and gave Exhibit P4 first information statement stating that Sali consumed poison after administering the same to her child. The police registered a crime against the deceased under Section 307 IPC and also under the caption of unnatural death. After investigation, final report was filed stating that on account of the death of Sali, the charge against her was dropped.

3. On 7.12.1989 a report was filed seeking

permission to conduct further investigation. After obtaining necessary sanction, the case was further investigated. After the investigation was over, final report was filed before the learned Magistrate stating that the petitioner committed the offences punishable under Sections 498A and 306 IPC. The petitioner was arrested and subsequently released on bail. The learned Magistrate, after completing the formalities, committed the case to the court of sessions. The learned Sessions Judge made over the case to the Assistant Sessions Judge. He was defended by a counsel of his choice. When the accused appeared before the Assistant Sessions Judge, charges were framed under Sections 498A and 306 IPC, after hearing both sides. The charges were read over and explained to the petitioner. He understood the same and pleaded not guilty. On the side of prosecution, P.Ws.1 to 15 were examined and Exhibits P1 to P10 were proved and marked. After the prosecution evidence was over, accused was questioned under Section 313 Cr.P.C. He denied all the incriminating circumstances brought against him. The matter was heard under Section 232 Cr.P.C. Since no

grounds were made out to acquit the accused, he was called upon to enter into his defence. No oral evidence was adduced by the petitioner. Exhibits D1 to D12 are the C.D. contradictions of various prosecution witnesses. The learned Assistant Sessions Judge, after hearing both sides, found the petitioner guilty of the offences charged, convicted and sentenced him as aforesaid. The petitioner filed Crl. Appeal No.87 of 1993 before the Court of Sessions. That appeal was dismissed. Hence this Criminal Revision Petition.

4. The following points arise for consideration in this revision: (1) whether Sali, the deceased, committed suicide at or about 7.30 p.m. on 13.4.1988? (2) Whether the accused abetted the suicide? (3) Whether the petitioner treated the deceased with cruelty? and (4) whether the sentence imposed is legal and proper.

5. The facts that the petitioner married deceased Sali on 23.6.1986 and she died on 13.4.1988 are not disputed. But that alone is not sufficient to convict the revision petitioner. It is to be noted that under the provisions of IPC committing suicide is not an offence.

What is made an offence is attempt to commit suicide or abetment of suicide. The mere fact that Sali died alone is not sufficient to hold that the revision petitioner is guilty of the offence punishable under Section 306 IPC.

6. According to the prosecution, the petitioner treated deceased Sali with cruelty. To prove that aspect, the prosecution relies on the evidence of PWs.1 to 7. P.W.1 is an independent witness who took Sali and the child to the hospital. He turned hostile and did not support the prosecution. He does not say anything about the illtreatment of the deceased by the petitioner. P.W.2 is the father of the deceased. P.W.3 is her brother and P.W.4 her mother. All the three gave evidence to the effect that the petitioner used to manhandle the deceased and beat her. They had also deposed that at the time of marriage gold ornaments worth 5 sovereigns and Rs.10,000/- were given to Sali and the petitioner misappropriated the same. They also deposed that Sali was given 10 cents of land and the petitioner wanted the deceased to sell the same. P.W.5 is an independent witness. She deposed that for a short

period the petitioner and Sali resided in a house situated very close of her house and at that time the petitioner used to beat the deceased. P.W.6 is the husband of the sister of the deceased. He also deposed that Sali told him that the petitioner used to manhandle her. P.W.7 is the maternal aunt of the petitioner. She turned hostile and did not support the prosecution case. The evidence of P.Ws.2 to 4 is corroborated by the evidence of P.W.5, who is an independent witness. Their evidence proves beyond any reasonable doubt that the petitioner used to manhandle the deceased and subjected her to cruelty. So the findings of the courts below that the petitioner is guilty of the offence punishable under Section 498A IPC is correct and does not call for any interference. I confirm that finding.

7. Now I shall consider whether the finding of the courts below that the petitioner is guilty of the offence punishable under Section 306 IPC is correct. As I have already stated, committing of suicide is not an offence. The prosecution has to prove that the petitioner abetted the suicide.

8. First I shall consider how far the evidence on record proves the factum of suicide in this case. The prosecution has got a case that Sali committed suicide by consuming poison. P.W.1 and others took Sali and the child to the hospital at about 7.00 to 7.30 p.m. P.W.1 deposed that at that time there was a smell of Kerosine on Sali and the child. He further deposed that he called Sali, but did not respond. According to him Sali might have been consumed Kerosine.

9. P.W.2 did not say that Sali committed suicide. According to him the petitioner killed Sali. He deposed that two relatives of the petitioner came to his house and informed that Sali was admitted in the hospital. He further deposed that at about 8.30 p.m. he went to the Hospital in a Jeep along with those persons. On the way to the hospital one of the persons travelling in the Jeep told him that the petitioner administered poison to Sali. According to P.W.2 he went to the hospital and wanted to see his daughter but he was not permitted to see her body. So he went back to his house. He further deposed that he

did not know as to what happened to the dead body of Sali, who received the same and where it was cremated.

10. P.W.3, brother of Sali, during chief examination stated that on getting information that Sali was admitted in the hospital, he went to the hospital and on the way he was told that Sali consumed poison. But during the cross-examination he changed that version and deposed that the information conveyed to him was to the effect that the petitioner administered poison to Sali. He also deposed that he did not see the dead body of Sali and he did not know who received the dead body and where it was cremated. Same is the evidence of P.W. 4 also.

11. P.W.5 does not say anything about the death of Sali. P.W.6 deposed that he also accompanied PWs.2 and 3 in the Jeep and one Mr.Thomaskutty, who travelled in the Jeep, told him that it was the petitioner who administered poison to Sali. So according to P.Ws.2, 3 and 6, it was a case of homicide and not a case of suicide.

12. P.W.7 had deposed that while she was offering prayer at about 7.15 p.m. Sali came to the prayer

room and told P.W.7 that she was leaving the house. Her daughter-in-law told Sali that she cannot leave the house before the petitioner, who had gone out, returns. She further deposed that after some time it was found that Sali had consumed poison and Sali was taken to the hospital. The oral evidence of PWs.1 to 7 alone is not sufficient to hold that Sali committed suicide by consuming poison.

13. In view of the fact that it was a case of unnatural death of a lady, the inquest was conducted by the Sub Divisional Magistrate, who was examined as P.W.11. The evidence of P.W.11 consists of two sentences. He deposed that on 14.4.1988 he was the RDO of Adoor and he conducted the inquest, which is marked as Exhibit P2. The Sub Divisional Magistrate had not stated anything about the contents of the inquest report. P.W.9 is an independent witness. He only proved his signature in the report. So there is no evidence as to what exactly is the finding of P.W.11 in Exhibit P2 inquest report.

14. The only other piece of evidence in record is the Postmortem report. P.W.10 was the Assistant Civil Surgeon

attached to the Taluk Hospital at the relevant period. He conducted the autopsy on the dead body of Sali and Exhibit P3 is the Postmortem Certificate. It reads as follows:

> "**External appearances.** The body was calm, cold entire. Rigor mortis disappeared from the upper extremities, but it has not completely passed off from the lower extremities. Height 152 cms. Hair black, 18 cms. long. Eyes closed, eyeballs protruded. Face bloated. Lips swollen and everted. A frothy reddish fluid is seen running out of the mouth and nostrils. Breasts greatly distended. Body swollen up. Patches of greenish discoloration of the skin are seen over the abdomen. Superficial veins on the chest, right shoulder and right side of the abdomen looks very prominent. Blisters containing a reddish coloured fluid seen on the chest, lateral side of the breasts and arms. No antemortem injuries on the body. **Internal appearances**. Epiglottis, Trachea and oesophagus congested. On opening the abdominal cavity an unpleasant and nauseating gas escaped with a loud noise. Stomach contained 240 mls of brown fluid and undigested rice and curries. Stomach mucosa congested. The small intestine is inflated with gas. Liver soft and flobby with greenish discoloration on the surface. All internal organs are congested. Heart chambers empty. Lungs were softened. Uterus normal. Urinary

bladder empty. Brain soft and pulpy.

Opinion as to the cause of death:

Opinion reserved pending receipt of the report of the chemical analysis".

The report of the chemical analyst is not available among the records. On the other hand, the evidence of the investigating officer would show that the contents of Viscera collected by the Doctor, who conducted the postmortem, was not sent for chemical analysis at all. Still P.W.10, the Doctor, who conducted the postmortem deposed that the death was due to poisoning. It is very interesting to note that he had not stated the cause of death in the postmortem certificate. He was examined on 5.8.1993. At that time he gave evidence to the effect that the death occurred due to poisoning. P.W.10 had not stated any reason as to how he was able to form such an opinion which he was unable to form at the time of autopsy. So no value can be given to that part of the evidence of P.W.10. According to P.W.10 the death must have occurred due to poisoning preferably by organic phosphorus compounds. It is true that P.W.10 was not cross-examined. But the

opinion regarding the cause of death stated by the Doctor is not based on any material.

15. In the absence of the final opinion based on the chemical analysis report, it is not possible to hold that Sali died due to consumption of poisonous substances. So there is no evidence on record to establish the cause of death. The Assistant Sessions Judge as well as the Sessions Judge have not considered this aspect at all. Both the courts below proceeded on the assumption that it is an admitted case of suicide. In a criminal prosecution for an offence punishable under Section 306 IPC, the court cannot convict a man based on assumptions and presumptions. Prosecution has a duty to establish the cause of death.

16. Now I shall consider how far the evidence on record justify the finding of the courts below that the petitioner abetted the suicide. As I have already stated, the evidence on record shows that the petitioner married the deceased on 23.6.1986 and she died on 13.4.1988. The evidence of P.W.1 is of no help to the prosecution. He even denied the first information statement given by him. He

only deposed that he took Sali and the child to the hospital and Sali died in the hospital. He further deposed that on getting the news of the incident, the petitioner came to the hospital. The evidence of P.W.2 shows that the petitioner was not having any permanent job. He had worked as a tapper of rubber trees. He had also worked as a cleaner in a lorry and a watchman of the Canal. He further deposed that at least on a dozen occasions there were quarrel between the petitioner and Sali and she used to come to his house. He also deposed that on one occasion the deceased and the son-in-law resided in another house for three months and as and when the petitioner was facing financial constraints he used to help him. He further deposed that just prior to the incident, a quarrel took place and Sali came to his house and told him that she will not go back. The petitioner came there and told the deceased that he had taken a house on rent and only because of that fact he permitted his daughter to go with the accused. P.W.2 further deposed that the statement made by the petitioner that he took a house on rent was false and actually the house belonged to

one of his maternal aunts. It is true that P.W.2 denied the suggestion that Sali was very adamant that she will not live in the in-law's house and wanted a separate residence. P.W.4 is the mother of the deceased. She deposed that the petitioner along with the deceased resided in a house belonging to her elder daughter for about three months. She also deposed that the petitioner was not having any permanent job. She deposed that few days prior to the date of the incident, Sali left the matrimonial home and told P.W.4 that she will not go back to that house. She further deposed that on 9th April the petitioner came to her house and asked the deceased to accompany him. P.W.4 also deposed that initially she did not allow her daughter to go with the petitioner but when he told her that he had taken a house on rent, she allowed her daughter to go with the petitioner. She further deposed that the petitioner remained there for some time, had his lunch and went back along with her daughter. She had also admitted that her daughter told her that she was not prepared to reside with the mother-in-law.

17. The incident took place in the house of P.W.7. P.W.7 deposed that on the date of the incident Sali insisted the petitioner that he must construct another house. Then the petitioner told her that he was not having necessary funds with him and they can think of putting up a house after some time. She further deposed that at about 3.00 p.m. the petitioner went out of the house and at that time the deceased was not in the house. Sali went out after telling P.W.7 that she wanted to purchase some medicine for her child. P.W.7 further deposed that at about 6.00 p.m. the petitioner came back and made enquiries about Sali. P.W.7 told the petitioner that Sali had gone out for purchasing medicine. Then the petitioner also went out in search of Sali. She further deposed that Sali was taken to the hospital in a Jeep and the petitioner boarded in the Jeep on the way and he remained in the hospital. She also deposed that at the time of preparing the inquest also the petitioner was present in the hospital and he received the dead body.

18. P.W.8 was an independent witness. He was

residing at Chayalod. He deposed that on 13.4.1988 he saw Sali with her child at about 6.45 p.m. He further deposed that he was walking through Chayalod road from Kilikod Junction and at that spot he met Sali. He also deposed that Sali was walking towards Kilikod Junction. P.W.8 informed Sali that she was proceeding to the wrong direction and showed her the correct way. He took Sali to the house in which the incident took place. He further deposed that at that time Sali was having her child and holding a packet in her hand. He deposed that since Sali lost the way to the house of P.W.7, she was worried. There is nothing in the evidence of P.W.8 to indicate that the deceased was disturbed and she had any intention to put an end to her life.

19. The evidence on record shows that the deceased was not prepared to stay in the parental house of the petitioner. She told her mother that she did not want to reside with her mother-in-law. She wanted to have a separate residence. In fact she accompanied the petitioner on 9.4.1988 to the house of P.W.7 only because the

petitioner told her that he had taken a house on rent for separate residence. But when she reached the house of P.W.7, she understood that it was not a rented house, but the house of the maternal aunt of the petitioner. The evidence of P.W.7, though declared as hostile, shows that Sali wanted the petitioner to took another house on rent and shift their residence to that house. But the accused was not prepared and the quarrel took place. The conduct of the petitioner after the incident is also very relevant. He was present in the hospital and received the dead body. He took steps for the cremation. The child was residing with him. By no stretch of imagination, it can be said that the petitioner abetted the deceased to commit suicide only because of the fact that frequent quarrel took place between Sali and the petitioner. That was mainly because of the financial constraints and also because of her demand for separate residence. No witness had stated that at any point of time the petitioner told the deceased to commit suicide. Merely because the petitioner ill-treated or manhandled the deceased it cannot be said that he abetted

suicide. This material aspect was not considered by both the courts below. The findings of the courts below that Sali committed suicide at about 7.30 p.m. on 13.4.1988 and that was because of the revision petitioner abetted the suicide were not based on any legal evidence. Hence the finding of the courts below that the petitioner was guilty of the offence punishable under Section 306 IPC is unsustainable and liable to be set aside. I do so. I hold that the prosecution has failed to prove the charge under Section 306 IPC. The petitioner is entitled to acquittal of that offence.

20. In the result, the Criminal Revision Petition is allowed in part. The conviction and sentence imposed on the revision petitioner under Section 498A IPC are confirmed.

21. The conviction and sentence imposed on the revision petitioner under Section 306 IPC are hereby set aside. He is found not guilty of that offence and acquitted. If the petitioner had already undergone the sentence imposed on him under Section 498A IPC and his continued detention is not required in connection with any other case,

he will be released from jail forthwith. Fine if any paid, will be refunded to the petitioner.

Office is directed to communicate a copy of this order to the Superintendent of the Central Prison, Trivandrum, forthwith.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

==========

CRL. R.P. NO.3323 OF 2004

==========

O R D E R

18th OCTOBER, 2006